



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
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DIVISION OF REVENUE

AUGUST 26, 1999

TECHNICAL INFORMATION MEMORANDUM 99-4

SUBJECT: Legislation enacted during the First Session of the 140th Delaware General Assembly.

SUMMARY:

During the First Regular Session of the 140th General Assembly, ended June 30, 1999 and the August 3, 1999 Special Session, thirty bills and resolutions were enacted of interest to or with an impact on taxpayers and the Department of Finance.

The subjects range from deregulation of electricity distribution companies, retail auto installment sales and the Delaware Tobacco Settlement Act of 1999 to research and development tax credits and personal income tax reductions; from realty transfer taxes and rules for mailing personal income tax returns to exemptions for charitable trusts and supermarket restaurants.

The bills may be viewed on the Delaware General Assembly web site at <http://www.state.de.us/research/dor/lis.htm>, by clicking on "140th General Assembly Bill Tracking".

There are four broad categories of legislation which affect taxpayers and the Department of Finance: (1) legislation primarily affecting the Delaware business environment through deregulation, simplification, and reductions in the tax burden; (2) legislation with broad policy impact but only indirect impact on the tax code; (3) legislation affecting individuals and businesses alike; and (4) legislation amending tax practice and procedure.

I. Legislation relating to deregulation, simplification, and reductions in the tax burden affecting the Delaware business environment:

1. Neighborhood Assistance Tax Credits.

S.B. No.248 replaces the existing Neighborhood Assistance Tax Deduction with Neighborhood Assistance Tax Credits. The new Act allows corporations to offset up to \$100,000 of income tax liability for job training, education, crime prevention, housing, and economic development activities in impoverished areas, and for contributions to neighborhood assistance organizations. (Reference: Title 30 Delaware Code §§ 2001-2006; Effective: on or after January 1, 2000.)

2. Research and Development Tax Credits.

H.B. No. 103 adds a new Subchapter VIII to Chapter 20 providing for up to \$5 million in Delaware Research and Development Tax Credits to all Delaware taxpayers for qualified research and development expenses in a taxable year. The credit is equal to (a) 10% of the excess of the taxpayer's total Delaware qualified research and development expenses over its base amount (as defined by § 41(c) of the Internal Revenue Code, with some modifications), or (b) 50% of Delaware's apportioned share of taxpayer's federal research and development tax credits, with modifications. In no year may the Delaware Research and Development Tax Credits exceed 50% of the taxpayer's qualified tax liability. Provision is made for carry-forward, but not carry-back or assignment of unused credits. (References, Title 30 Delaware Code §§ 2010, 2023, 2024, and addition of §§ 2070-2075; effective for periods after December 31, 1999 and before January 1, 2006.)

3. Gas and Electricity Public Utilities Tax.

H.B. No. 18 amends the Public Utility Tax to provide that gas (as well as electricity) commodities are subject to the tax whether generated or produced within or without this State. (References, Title 30 Delaware Code §§ 5501, 5502, 5503, 5504; effective for delivery of utility services and commodities delivered after October 1, 1999.)

S.B. No. 247 expands the exemption from the public utility tax for certain public utility distributors to their gross receipts from sales of gas and gas services sold for use in any automobile manufacturing process. (Reference, Title 30 Delaware Code § 5506; effective for tax periods commencing after December 31, 1999.)

4. Exemption of electronic pagers service.

H.B. No. 215 distinguishes electronic paging services from cellular telephone services and exempts the former from the Public Utilities Tax. (References, Title 30 Delaware Code §5501; effective retroactively for periods after February 29, 1992.)

5. Manufacturers license tax.

S.B. No. 128 amends the definition of manufacturers for Delaware license and gross receipts tax purposes. For Delaware manufacturers that manufacture goods using materials under bailment for another manufacturer, it is no longer required that the other manufacturer also be licensed as a manufacturer in this State. (Reference, Title 30 Delaware Code § 2701(5); effective after December 31, 1999.)

S.B. No. 90 reduces the gross receipts tax rate on manufacturing activities by 25%. (Reference, Title 30 Delaware Code § 2702(b); Effective: after December 31, 1999.)

6. Construction Transportation Contractor licenses.

H.B. No. 335 creates a new class of contractor for business license and gross receipts tax purposes known as a "construction transportation contractor." Whereas all such companies were formerly classed as dray-persons, under this bill a "construction transportation contractor" is allowed to deduct the cost of dray-persons who transport tangible property of other persons as part of a construction project. (Reference, Title 30 Delaware Code § 2501; effective after December 31, 1999.)

7. Delaware Travelink tax credits.

H.B. No. 292 updates the Travelink tax credits program, adding a Welfare to Work component, eliminating the prior certification requirements, and clarifying certain eligible costs. (References, Title 30 Delaware Code §§ 2031, 2032, 2033, 2034, 2035, add § 2037; effective July 20, 1999.)

8. Housekeeping; seafood, restaurants, etc.

H.B. No. 216 is a multi-faceted "housekeeping" bill, some provisions of which do not effect a change in substantive law. Substantive changes include: (a) exemption from the necessity for a wholesaler business license for commercial fishers, crabbers, clammers, etc., and (b) exemptions from separate restaurant licensing for grocery stores and supermarkets selling less than 10% of their food for human consumption that is ready to eat. (Reference, Title 30 Delaware Code §§ 2301, 2901, 2906, 1503, 2120; these items effective after December 31, 1999, other housekeeping items do not affect current law, and have no new effective date.)

9. Licensing of sales finance companies; retail installment transactions.

H.B. No. 163 changes the definition of a "retail installment transaction" which affects the requirement of persons engaged in the business of a sales finance company to be licensed by the State Bank Commissioner. A transaction is not a retail installment transaction if the retail seller charges no interest. Where motor vehicle dealers who are not required to provide a surety bond to the Banking Commissioner pursuant to Chapter 29 of Title 5 of the Delaware Code self-finance any sale of a motor vehicle to a retail buyer without charging interest, such dealers shall, before obtaining an annual business license, file an original surety bond in the principal sum of \$25,000 with the Department of Finance. (References, Title 5 Delaware Code § 2901, Title 30 Delaware Code § 3005; effective July 23, 1999.)

10. Unredeemed restaurant gift certificates.

H.B. No. 54 exempts restaurant retailers from the requirement of reporting to the State Escheator abandoned property in the nature of gift certificates having a face value of \$5.00 or less. (References, Title 12 Delaware Code §1198, 1199; effective for gift certificates issues on or after January 1, 1994.)

II. Legislation affecting individuals and businesses:

1. Personal income tax reductions.

Several reductions in the effective rates of personal income tax and other tax reduction measures were enacted.

S.B. No. 243 and H.B. No. 414 reduce income tax rates for individuals. The new rates have been changed on taxable income:

<u>between</u>	<u>and</u>	<u>from</u>	<u>to:</u>
\$2,000	\$5,000	2.60%	2.20%
\$5,000	\$10,000	4.30%	3.90%
\$10,000	\$20,000	5.20%	4.80%
\$20,000	\$25,000	5.60%	5.20%
\$25,000	\$60,000	5.95%	5.55%
\$60,000	Up	6.40%	5.95%

(Reference: Title 30 Delaware Code § 1102(a)(10) and (11); effective after December 31, 1999.)

S.B. No. 244 raises the adjusted gross income thresholds for persons required to file personal income tax returns and increases the personal credit for individuals (and the extra personal credit for persons over 60) from \$100 to \$110. (Reference: Title 30 Delaware Code §§ 1161, 1106; effective after December 31, 1999.)

H.B. No. 411 increases the standard deduction for married persons to equal the standard deduction for two single persons. (Reference: Title 30 Delaware Code § 1108; effective after December 31, 1999.)

S.B. No. 245 increases the tax exclusion of pension and eligible retirement income of taxpayers age 60 and above from \$5,000 to \$12,500. (Reference Title 30 Delaware Code § 1106(b); effective after December 31, 1999.)

H.B. No. 412 adds realized capital gains to the definition of excludable "eligible retirement income" for individuals age 60 or over. (Reference: Title 30 Delaware Code § 1106(b)(3); effective after December 31, 1999.)

H.B. No. 64 increases the personal income tax credit for expenses of volunteer firefighter, ambulance and rescue crew members and members of their auxiliaries from \$150 to \$300 for tax years after 1998. (Reference: Title 30 Delaware Code § 1113; effective December 31, 1998.)

2. Realty Transfer tax exemption, non-profit housing rehabilitation.

H.B. No. 175 exempts conveyances to or from an organization exempt from income tax pursuant to § 501(c)(3) from the Delaware realty transfer tax when the purpose of said conveyance is to provide owner-occupied housing to low and moderate income households by rehabilitating and reselling said properties without profit. (Reference, Title 30 Delaware Code § 5401, effective July 23, 1999.)

3. Exotic beer and wine.

S.B. No. 175 permits Delaware consumers to purchase from retailers outside of Delaware beer and wine not currently available in this State. (Reference, Title 4 Delaware Code § 526; effective June 1, 2000.)

4. Mileage reimbursement.

H.B. No. 118 increased the rate of reimbursement to State employees for the use of their personal vehicles for State business from 25 cents to 28 cents per mile and one later to 31 cents per mile. The bill will have an impact on the calculation of a charitable mileage deduction allowed by Title 30 Delaware Code § 1109(a)(2)a. (Reference, Title 29 Delaware Code § 7102; effective July 1, 1999 (28 cents) and July 1, 2000 (31 cents).)

5. Delaware land and historic resource tax credits:

H.B. No. 413 provides tax credits of 40% of the value of Delaware land or interests in land unconditionally conveyed to eligible organizations for open space, natural resource, biodiversity, or historic preservation purposes. The credit is limited to \$50,000 or the amount of personal or corporation income tax in the tax year. (Reference, Title 30 Delaware Code Chapter 18; effective on or after January 1, 2000.)

III. Legislation amending tax practice and procedure:

1. Statutes of limitation for refunds, assessments, accrual of penalty and interest.

S.B. No. 148 amends certain procedural aspects of the Delaware tax code to conform

to parallel provisions of the Internal Revenue Code. These include, (a) suspension of the running of the statute of limitations against filing a claim for refund during periods of medically determinable physical or mental impairment without a spouse, guardian, or other person to act on behalf of the individual in financial matters; (b) tolling the accrual of interest and penalty on income and business license tax during periods for which the Secretary of the United States Treasury has suspended the filing of federal income tax returns for taxpayers located in a federally declared disaster area; and (c) extending the statute of limitations for assessing tax for substantially understated items of income, gross receipts, gifts or estates to six years. (Reference, Title 30 Delaware Code §§ 531, 533, 539; effective July 1, 1999.)

2. Alternatives to taxpayer prepared/paper tax returns.

S.B. No. 149 permits the Director of Revenue to mail to any taxpayer who filed a return during the previous year which was (a) prepared by a paid return preparer or (b) filed electronically or digitally, a notification of the requirement of filing a return and methods of obtaining a blank return, including telephone numbers and internet sites of the Division of Revenue for obtaining down-loadable returns. This notification may be sent in lieu of a blank return the Director is otherwise required to mail. (Reference, Title 30 Delaware Code § 356; effective for tax years after December 31, 1998.)

3. Penalty for failure to obtain or renew business license.

H.B. 231 provides a \$200 penalty for failure to obtain or renew a business license, unless the failure is self-disclosed. Under such circumstances, the Director of Revenue will not be required to issue a business license until the taxpayer has paid the license fee and penalties (or filed a protest of the penalty). (Reference Title 30 Delaware Code §§ 534(l), 523; effective July 1, 1999 or 30 days after its enactment into law, whichever shall be the later.)

IV. Legislation with broad policy impact but only indirect impact on the tax code:

1. Escrow fund for proceeds of Delaware Tobacco Settlement.

H.B. No. 180 enacts a new Chapter 60C of Title 29 of the Delaware Code entitled "Delaware Tobacco Settlement Act of 1999". Under the Act, tobacco manufacturers which are not participants in the Master Settlement Agreement of November, 1998 between this State and leading United States tobacco product manufacturers must place into a qualified escrow fund on April 15 of each year a sum of money per unit of individual cigarettes sold to consumers in this State. The Department of Finance is charged with promulgation of regulations to determine the number of cigarette units sold based on excise taxes collected. The escrow funds will be held for a period of twenty-five years and used to pay judgments or settlements of cigarette smoking related claims by the State against such tobacco products manufacturer. (Reference, Title 29 Delaware Code Chapter 60C; effective July 20, 1999.)

2. Charitable trusts, exemption.

S.B. No. 147 exempts charitable trusts from tax on certain types of income to the same

extent as corporations are exempt. (Reference, Title 30 Delaware Code §1133; effective after December 31, 1998.)

V. Senate Concurrent Resolution

Senate Concurrent Resolution No. 8 calls upon the Delaware Congressional Delegation to support legislation to strengthen certain oversight powers and authority of the United States Postal Rate Commission and upon the Delaware Division of Revenue to analyze and report to the General Assembly the impact of lost taxes and fees as a result of the special status of the United States Postal Service.

William M. Remington
Director of Revenue

This memorandum is intended for general notification and explanation of recently enacted Delaware law and should not be relied upon to the exclusion of the text of the legislation or the Delaware Code.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue help line at (302) 577-8200, or visit the Division's website at <http://www.state.de.us/revenue> where information about tax topics and links to phone numbers for other information may be found.